No. 15546

UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

BERT RUUD AND EMMA RUUD,
APPELLANTS

VS.

UNITED STATES OF AMERICA,
APPELLEE

REPLY BRIEF OF APPELLANTS

Appeal From the United States District Court
For the District of Idaho, Eastern Division

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ARGUMENT

The attention of the Court is respectfully directed to page 385 et seq. of the printed record. The testimony shows that Mr. Ellsworth was an experienced farmer, familiar with the lands which were being condemned by the United States; familiar with their productivity and land values in the neighborhood. He was asked to state his opinion as to the highest and best use to which the Ruud lands could be put. The United States objected on the grounds that the witness was not qualified as an expert in appraising real estate. A discussion was had between counsel for Ruud and the Court, relative to the farming background of the witness and his familiarity with the lands in question and value. The Court stated: "I can't change my ruling unless you can show qualification in connection with making an appraisal of land." (R. 386)

A like ruling was made as to testimony of Smith.

The Trial Court held, then, that these witnesses, not having been qualified as expert real estate appraisers, were not competent to give an opinion as to the highest and best use to which the lands could be put. As far as this appeal is concerned, it is immaterial what the witnesses might have testified. The Trial Court held the witnesses not competent. An offer of proof would not change the issues. The question was whether or not a farmer is a competent witness to testify as to highest and best use, and as to value was presented to the Trial Court. The ruling of the Trial Court is assigned as error.

There was no objection made in the Trial Court that the testimony was cumulative.

The United States attorneys now contend that there is no showing what witnesses would have testified to, if permitted to answer. This is not the question presented in the Trial Court, nor the one on which the ruling was made.

The discussion of the Supreme Court in somewhat similar circumstances is significant: "No objection was made on the part of the government such as is now urged. The ruling went not to the sufficiency of the offer, but to the materiality of the evidence. If the evidence is an appropriate link in the chain of proof, that is enough".

McCandless vs. United States, 298 U. S. 342, 80 L. Ed. 1205

A party is not compelled to make a formal offer of proof to avail himself of error in rejection of evidence.

Meaney vs. U. S. (C.A. 2) 112 Fed. (2d) 538, 130 A. L. R. 973.

McGrath vs. Chung Young, 188 Fed. (2d) 975.

If the testimony is competent, its exclusion cannot help but affect a substantial right of a party.

Meaney vs. U. S. (C.A. 2) 112 Fed. (2d) 538, 130 A.L.R. 973.

McCandless vs. U. S. 298 U. S. 342, 80 L. Ed. 1205.

Idaho Ry. Co. vs. Columbia Synod, 20 Idaho 568, 119 Pac. 60.

SUMMARY

The landowner is involved in a legal proceeding which he did not invite, create or initiate. The fact that the owner is denied the right to refuse to sell his own property affords good reason why he should be given every opportunity to disclose to the jury the real character of the property, its location, surroundings, highest and best use, its adaptability to any special use, productiveness and anything which affects the value as between buyers and sellers generally.

When testimony on behalf of the land owner is excluded, as to highest and best use and as to fair market value, the verdict certainly cannot be held to be "consistent with substantial justice". To refuse to permit him the right of Introduction of evidence through qualified, competent witnesses, is prejudicial.

Respectfully submitted,

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I certify that three copies of above Reply Brief were mailed to counsel for appellee this 18th day of October, 1957.

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